

ATTACHMENT TO UIPL 24-89

TEXT, EXPLANATION AND INTERPRETATION OF
CHANGES TO UC PROGRAM

Made by Public Law 100-647
(Sections 1001, 1011B, 3041, 3042,
4001, 4002, 6305 and 8301)

Sections 1001(d)(2)(C) and (g)(4)(B). Amended

Sections 3306(c)(19) and 3306(b)(9), FUTA.

A.

Text of Amendments.

1.

Section 1001(d)(2)(C):

The following provisions of the 1986 Code are each amended by striking out "(F) or (J)" each place it appears and inserting in lieu thereof "(F),(J), or (M)": (i) Section 3121(b)(19). (ii) Section 3231(e)(1). (iii) Section 3306(c)(19).

2.

Section 1001(g)(4)(B):

The following provisions of the 1986 Code are each amended by striking out "section 217" and inserting in lieu thereof "section 217 (determined without regard to section 274(n))": (i) Section 3121(a)(11). (ii) Section 3306(b)(9). (iii) Section 3401(a)(15).

B.

Discussion.

1. Section 1001(d)(2)(C) of the Technical and Miscellaneous Revenue Act of 1988 amends Section 3306(c)(19), FUTA, by adding another exclusion from the definition of employment. Section 3306(c)(19) previously excluded from the definition of employment "services performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of Section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F) or (J)), and which is performed to carry out the purpose specified in subparagraph (F) or (J)" Section 3306(c)(19), FUTA, was amended to expand this exclusion to services performed by a nonresident alien for the period the alien is temporarily present in the United States as a nonimmigrant under subparagraph (M) of Section 101(a)(15), INA. Section 101(a)(15)(M), INA, relates to certain aliens entering

the United States solely to pursue a full course of study at certain vocational and other non-academic institutions.

2. Section 1001(g)(4)(B) of the Technical and Miscellaneous Revenue Act of 1988 amends Section 3306(b)(9), FUTA, which previously excluded from wages "any remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under Section 217, " IRC. Section 217 sets forth the conditions under which moving expenses are deductible from income taxes. Section 3306(b)(9), FUTA, was amended to provide that the deduction allowable under Section 217 will be "determined without regard to Section 274(n)", IRC. Section 274(n) permits deductions from income tax of 80 percent of certain meal and entertainment expenses. Accordingly, the exclusion from wages under Section 3306(b)(9) of certain moving expenses with respect to which deduction is allowable under Section 217 will not be subject to the 80 percent limitation of Section 274(n).

C. Implementation. Since the IRS has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying these provisions.

D. Effective Date. Under Section 1019(a) of the Technical and Miscellaneous Revenue Act of 1988, unless otherwise provided any amendment made by Title I of that Act, which includes Sections 1001(d)(2)(C) and (g)(4)(B), takes effect as if included in the provisions of the Tax Reform Act of 1986, P.L. 99-514, to which such amendment relates. The amendment made by Section 1001(d)(2)(C) relates to Section 123 of the Tax Reform Act which was effective for tax years beginning after December 31, 1986. The amendment made by 1001(g)(4)(B) relates to Section 142 of the Tax Reform Act which also was effective for tax years beginning after December 31, 1986. Therefore, the amendments made be Sections 1001(d)(2)(C) and (g)(4)(B) are both effective for tax years beginning after December 31, 1986.

Sections 1011B(a)(22)(C) and (23)(A). Definition of Wages Amended Under New Subsection 3306(t), FUTA, and Amended Section 3306(b)(5)(G , FUTA.

A. Text of-Amendments.

1. Section 1011B(a)(22)(C):

Section 3306 of the 1986 Code (relating to definitions) is amended by adding at the end

thereof the following new subsection:

"(t) BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.--Notwithstanding any paragraph of subsection (b) (other than paragraph (1)), the term 'wages' shall, include any amount which is includible in gross-income by reason of section 89."

2. Section 1011B(a)(23)(A):

Sections 3121(a)(5)(G) and 3306(h)(5)(G) of the 1986 Code are each amended by inserting "if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received" after "section 125)".

B. Discussion.

1. Section 1011B(a)(22)(C) of the Technical and Miscellaneous Revenue Act of 1988 adds new subsection (t) to Section 3306, FUTA, which expands the definition of wages to encompass any amount which is includable in gross income by reason of Section 89, IRC. Under Section 89, certain employer-provided benefits must be included in an employee's gross income for any taxable year unless the benefits are provided under a plan that meets certain conditions. In addition, if a "statutory employee benefit plan" discriminates in favor of highly compensated employees (as determined pursuant to Section 89), then a highly compensated employee's gross income will include the excess of certain benefits received under the plan.

2. Section 1011B(a)(22)(C) of the Technical and Miscellaneous Revenue Act of 1988 amends Section 3306(b)(5)(G), FUTA, which previously excluded from wages any payments made to an employee under a cafeteria plan, as defined in Section 125, IRC. These payments made under a cafeteria plan will now be excluded from wages under Section 3306(b)(5)(G), as amended, only if they would not be treated as wages outside the cafeteria plan and if it is reasonable to believe that under Section 125 the wages would not be treated as constructively received.

C. Implementation. Since the IRS has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying these provisions.

D. Effective Date. Under Section 1019(a) of the Technical and Miscellaneous Revenue Act of 1988, unless otherwise provided, any amendment made by Title I of that Act, which includes Sections 1011B(a)(22)(C) and (23)(A), takes effect as if

included in the provisions of the Tax Reform Act of 1986, P.L. 99-514, to which such amendment relates. Under Section 1151(k) of the Tax Reform Act, the amendments relating to Sections 89 and 125, IRC, were effective for years beginning after the later of December 31, 1987, or the earlier of (i) the date which is three months after the issuance of regulations pertaining to Section 89 or (ii) December 31, 1988. As no regulations have been issued, Sections 1011B(a)(22)(C) and (23)(A) are effective for years beginning after December 31, 1988.

III.

Sections 3041 and 3042. Federal and State Tax Treatment of Income Derived by Indians from Exercise of Fishing Rights Secured by Treaty.

A.

Text of Amendments.

1. Section 3041:

(a)

GENERAL RULES.--Subchapter C of chapter 80 of the 1986 Code (relating to provisions affecting more than one subtitle) is amended by adding at the end thereof the following new section:

"SEC. 7873. INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.

"(a)

IN GENERAL.--

"(1) INCOME AND SELF-EMPLOYMENT TAXES.--No tax shall be imposed by subtitle A on income derived--

"(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

"(B) by a qualified Indian entity, from a fishing rights-related activity of such tribe.

"(2) EMPLOYMENT TAXES.--No tax shall be imposed by subtitle C on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

"(b)

DEFINITIONS.--For purposes of this section--

"(1) FISHING RIGHTS-RELATED ACTIVITY.--The term 'fishing rights-related activity' means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

"(2) RECOGNIZED FISHING RIGHTS.--The term 'recognized

fishing rights' means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

"(3)

QUALIFIED INDIAN ENTITY.--

"(A)

IN GENERAL.--The term 'qualified Indian entity' means, with respect to an Indian tribe, any entity if-

"(i) such entity is engaged in a fishing rights-related activity of such tribe,

"(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

"(iii) except as provided in regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

"(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes. For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

"(B) QUALIFIED INDIAN TRIBE.--For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights related activity of such tribe.

"(c) SPECIAL RULES.--

"(1) DISTRIBUTIONS FROM QUALIFIED INDIAN ENTITY.--For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights related activity of such tribe.

"(2) DE MINIMIS UNRELATED AMOUNTS MAY BE EXCLUDED.--If, but for this paragraph, all but a de minimis amount-

"(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

"(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a), then the entire amount shall be entitled to the benefits of such paragraph."

(b) CLERICAL AMENDMENT.--The table of sections for such subchapter C is amended by adding at the end thereof the following new item:

"Sec. 7873. Income derived by Indians from exercise of fishing rights."

2. Section 3042:

Section 2079 of the Revised Statutes (25 U.S.C. 71) is amended by adding at the end thereof the following new sentence: "Such treaties, and any Executive Orders and Acts of Congress under which the rights of any Indian tribe to fish are secured, shall be construed to prohibit (in addition to any other prohibition) the imposition under any law of a State or political subdivision thereof of any tax on any income derived from the exercise of rights to fish secured by such treaty, Executive Order, or Act of Congress if section 7873 of the Internal Revenue Code of 1986 does not permit a like Federal tax to be imposed on such income."

B.

Discussion.

1. Section 3041. Various treaties, Federal statutes, and Executive orders reserve to Indian tribes rights to fish for subsistence and commercial purposes both on and off reservations. These treaties, statutes and Executive orders do not expressly provide whether income derived by Indians from protected fishing activities is exempt from taxation. Section 3041 adds Section 7873 to the IRC. The relevant portion of this new section provides that remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or by a qualified Indian entity is exempt from employment taxes imposed by Subtitle C, IRC, which includes FUTA. New Section 7873 defines, among other things, "fishing rights-related activity" and "qualified Indian entity".

2.

Section 3042. Section 2079 of the Revised Statutes (25 U.S.C. 71), as amended by Section 3042, prohibits the States and their political subdivision from taxing income to which new Section 7873, IRC, applies. In general, absent Congressional consent, States may not tax Indian reservation lands or income from activities carried on within the boundaries of a reservation. However, the State's authority to tax services performed by Indians in the exercise of fishing rights secured under treaty, Executive Order or Act of Congress was not clear as these activities were not always performed within the boundaries of a reservation. Section 3042 adds a new sentence to Section 2079 of the Revised Statutes (25 U.S.C. 71) to clarify this issue. Section 2079 now prohibits the taxation by States of any income derived from the exercise of the fishing rights discussed above if new Section 7873 does not permit a like Federal tax to be imposed. According to Conference Report 100-1104, Sections 7873 and 2079 exempt fishing rights income from Federal and State tax, "including income, social security, and unemployment compensation insurance taxes." The text of Section 2079 also prohibits taxation by political subdivisions of the States.

Therefore, States may no longer tax remuneration paid for services to which Section 7873 pertains for State unemployment compensation purposes.

C. Implementation. Since the IRS has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying this provision.

D. Effective Date. Under Section 3044 of the Technical and Miscellaneous Revenue Act of 1988, the amendments made by Subtitle E of Title III of the Act, which includes Section 3041 and 3042, "shall apply to all periods beginning before, on, or after the date of the enactment of this Act."

IV.

Section 4001. Extension and Modification of Exclusion for Employer-Provided Educational Assistance.

A.

Text of Amendment.

(a)

EXTENSION.--Subsection (d) of section 127 of the 1986 Code (relating to educational assistance programs) is amended by striking out "December 31, 1987" and inserting in lieu thereof "December 31, 1988" .

(b)

RESTRICTIONS RELATING TO EDUCATION AT THE GRADUATE LEVEL.--

(1)

IN GENERAL.--Paragraph (1) of section 127(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

(2)

SPECIAL RULE FOR TEACHING AND RESEARCH ASSISTANTS.-- Subsection (d) of Section 117 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULES FOR TEACHING AND RESEARCH ASSISTANTS.--In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase '(below the graduate level.)'." (c) EFFECTIVE DATES.--The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

B.

Discussion.

1. Section 3306(b)(13), FUTA, excludes from the definition of wages "any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 . . ." of the IRC. Section 127, which excludes from gross income certain amounts paid or expenses incurred by the employer for educational assistance to the employee, did not apply to taxable years beginning after December 31, 1987. Section 4001 restores, in part, the Section 127 exclusion retroactively to the date of expiration and extends it so that it expires for taxable years beginning after December 31, 1988. Additionally, the exclusion from gross income under Section 127 no longer applies to any payment for, or the provision of any benefits with respect to, any graduate-level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree.

2. Section 3306(b)(16), FUTA, excludes from the definition of wages "any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117 or 132" of the IRC. Section 4001(b)(2) adds new paragraph (5) to Section 117(d), IRC, which excludes from income the amount of any "qualified scholarship" provided to a graduate student who is engaged in teaching or research activities for an educational organization described in Section 170(b)(1)(A)(ii), IRC. Such an organization is one which "normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on."

C. Implementation. Since the IRS has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying this provision.

D. Effective Date. Under Section 4001(c) of the Technical and Miscellaneous Revenue Act of 1988, the amendments made by Section 4001 shall apply to taxable years beginning after December 31, 1987. However, Section 127, as amended, does not apply to taxable years beginning after December 31, 1988. The amendment to Section 117, on the other hand, applies to all taxable years beginning after December 31, 1987.

V.

Section 4002. Extension and Modification of Exclusion of Amounts Received Under Group Legal Services Plans.

A.

Text of Amendment.

(a)

EXTENSION.--Section 120(e) of the 1986 Code is amended by striking out "1987" and inserting in lieu thereof "1988".

(b)

LIMITATION ON VALUE OF INSURANCE PROTECTION WHICH MAY BE EXCLUDED.--

Section 120(a) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds \$70."

(2)

CONFORMING AMENDMENT.--Subparagraph (A) of section 125(e) (2) of the 1986 Code is amended by inserting "or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a) after "section 79".

(c)

EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years ending after December 31, 1987.

B.

Discussion. Section 3306(b) (12), FUTA, excludes from the definition of wages "any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 [of the IRC] (relating to amounts received under qualified group legal services plans)". Section 120, which excluded from an employee's gross income amounts contributed by an employer to a qualified group legal services plan for an employee or amounts reimbursed to an employee for legal services under such a plan did not apply to taxable years ending after December 31, 1987.

The amendments made by P.L. 100-647, restore, in part, the Section 120 exclusion retroactively to the date of expiration and extends it so that it expires for taxable years beginning after December 31, 1988. However, the exclusion from an employee's gross income is now limited to an annual premium value of \$70.

C. Implementation. Since the IRS has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying these provisions.

D. Effective Date. Under Section 4002(c) of the Technical and Miscellaneous Revenue Act of 1988, the amendments made by Section 4002 shall apply to taxable years ending after December 31, 1987. However, Section 120, IRC, as amended, does not apply to taxable years beginning

after December 31, 1988.

VI. Sections 6305. Treatment of Certain Family Services.

A.

Text of Amendment.

(a)

IN GENERAL.--A State may treat a person who renders dependent care or similar services as other than an employee [for] employment tax purposes for the applicable period if all of the following conditions are satisfied with respect to such person for such applicable period:

(i) The person does not provide any dependent care or similar services in any facility owned or operated by the State.

(ii)

The person is compensated by the State for such services, directly or indirectly, out of funds provided pursuant to Chapter 7 of Title 42 of the United States Code, or the provisions and amendments made by the Family Security [sic] Act of 1988.

(iii) The state does not treat the person, with respect to the provision of dependent care or similar services, as an employee for employment tax purposes.

(iv)

The State files all Federal income tax returns (including information returns) required to be filed with respect to such person on a basis consistent with the State's treatment of such person as other than an employee beginning on the date of the enactment of this section.

(v)

No more than ten percent of the State's employees are provided with insurance under Title II of the Social Security Act pursuant to voluntary agreements with the Secretary of Health and Human Services under section 218 of such Title.

(b) STATE.--For purposes of this section, the term "State" shall mean the government of the United States, District of Columbia, any State or political subdivision thereof, and any agency or instrumentality of any of the foregoing.

(c) EMPLOYMENT TAX.--For purposes of this section, the term "employment tax" means any tax imposed by subtitle C of the Internal Revenue Code of 1986.

(d)

APPLICABLE PERIOD.--For purposes of this section, the term "applicable period" means the period beginning on January 1, 1984 and ending on December 31, 1990.

(e) REPORT.--The Secretary of the Treasury shall report to the Senate Committee on Finance and the House Committee on Ways and Means on the text [sic] status of day care providers compenstated [sic]

B. Discussion.

1. In General. Under the common law test, an employer-employee relationship exists for Federal tax purposes if the person contracting for services has the right to control not only the result of the services, but also the means by which that result is

accomplished. Section 6305 creates a temporary exception to this common law test. Under Section 6305, a provider of dependent care or similar services is not required to be treated as an employee for employment tax purposes for the taxable years 1984 through 1990. The term "employment tax" is defined in Section 6305(c) to mean any tax imposed under Subtitle C of the Internal Revenue Code of 1986, which includes FUTA. Section 6305(a) specifies that, to be exempt from employment tax, all the following conditions must be satisfied for the taxable years 1984 through 1990:

(1) The person does not provide any dependent care or similar services in any facility owned or operated by the State;

(2) The person is compensated by the State for such services, directly or indirectly, out of funds provided pursuant to 42 U.S.C. Chapter 7 (i.e., all titles of the Social Security Act), or the provisions and amendments made by the Family Support Act of 1988;

(3) The State does not treat the person, with respect to the provision of dependent care or similar services, as an employee for employment tax purposes;

(4) The State files all Federal income tax returns, including information returns required to be filed with respect to such person on a basis consistent with the State's treatment of such person as other than an employee; and

(5) No more than ten percent of the State's employees are provided with insurance under Title II of the SSA, pursuant to Section 218, SSA. Section 218, SSA, pertains to voluntary agreements between States and the Secretary of Health and Human Services regarding the coverage of employees of a State or a political subdivision thereof.

2. Effect on Required Coverage. The provisions of Section 6305 affect the required coverage provisions of Section 3304(a)(6)(A), FUTA. Section 3304(a)(6)(A) requires, as a condition of certification of a State, that the State pay compensation based on services performed for State and local governmental entities and certain nonprofit organizations unless specifically excluded by FUTA. Since dependent care providers described in Section 6305 were not specifically excluded under FUTA, States were required to cover these providers. Where the conditions of Section 6305 are met, a State is no longer required by Section 3304(a)(6)(A), FUTA, to cover these providers for the taxable years 1984 through 1990, but may treat them "as other than an employee for employment tax purposes" under the conditions stated in Section 6305.

Section 6305(b) specifies that "State" means "the government of the United States, District of Columbia, any State or political subdivision thereof, and any agency or instrumentality of any of the foregoing." Because the Virgin Islands and Puerto Rico are not "States" under Section 6305(b), these jurisdictions may not exempt the services to which Section 6305 applies from the coverage required under Section 3304(a)(6)(A), FUTA.

C.

Implementation. Since the IRS has the primary authority for

administering the FUTA tax provisions, it will be responsible for interpreting and applying this provision.

D.

Effective Date. The changes made by this section shall apply to the period beginning on January 1, 1984 and ending on December 31, 1990, with respect to services performed during such period.

V. Section 8301. Self-Employment Demonstration Project.

A. Text of Amendment.

Section 9152(g) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) is amended--

(1) in paragraph (1), by striking "two" in the first sentence and inserting "three"; and

(2) in paragraph (2), by striking "four" and inserting "6".

B. Discussion. Section 9152 of the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203, authorized the Secretary of Labor to carry out three demonstration projects, under agreements with three States, to test the feasibility of providing self-employment allowances to unemployment insurance recipients. These allowances are paid in the same amount, on the same terms and subject to the same conditions as regular or extended benefits, except that State and Federal requirements related to availability for work, active search for work or refusal to accept suitable work do not apply. The law required that two reports be made to Congress on these projects. This section of the Technical and Miscellaneous Revenue Act amends the Omnibus Budget Reconciliation Act to extend the due dates of these reports. The due date of the interim report is extended from no later than two years after the date of enactment (December 21, 1987) to no later than 3 years after the date of enactment of P.L. 100-203 (December 21, 1990). The due date of the final report is extended from no later than 4 years after the date of enactment (December 21, 1987) to no later than 6 years after the date of enactment of P.L. 100-203 (December 21, 1993).

C. Implementation. No changes are required in State law or procedure.

D. Effective Date. This amendment made by this section is effective November 10, 1988.